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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 231.

WILLIAM H. WELDON, NEWS TRIBUNE COMPANY and JEFFERSON TELEVISION COMPANY,
Petitioners,

vs.

HON. SAMUEL E. SEMPLE, Judge Pro Hac Vice of the Circuit Court of Audrain County, Missouri,
Respondent.

WILLIAM H. WELDON, NEWS TRIBUNE COMPANY and JEFFERSON TELEVISION COMPANY,
Petitioners,

vs.

HON. FRANK W. HAYES, Judge of the Circuit Court of Cooper County, Missouri,
Respondent.

ADDITIONAL STATEMENT TO JOINT PETITION UNDER RULE 23 (J) 5 FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

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ADDITIONAL STATEMENT

Subsequent Events.

Both this Court and the Supreme Court of Missouri having refused a stay, one of the two cases involved in these applications, i. e., Skain v. Realtors, was tried on June 23 and 24, 1966, to a jury, which returned a verdict for defendants both as to actual and as to punitive damages (Skain, Supp. T. 1). A motion for new trial is pending (Skain, Supp. T. 2).

This was the trial the punitive damages portion of which relators sought to have prohibited in the second of the two above-captioned Missouri proceedings in prohibition (Weldon v. Hayes, Judge), which are under review in these certiorari applications (Skain T. 1, et seq.). In our Petition, p. 5, it is listed as No. 4 of the cases in which punitive damages are sought for the single publication.

The trials of the cases listed as "2" and "3" (Pet. p. 5) are pending; No. 2, Riner v. Relators, being the subject of the first of the two above-captioned Missouri proceedings in prohibition (Weldon v. Semple, Judge), which are under review in these certiorari applications (Riner T. 1, et seq.).

Unless plaintiff's motion for new trial be granted in the Skain case, therefore, the latter of these two captioned applications (Weldon v. Hayes, Judge) is mooted.

However, as far as the other application is concerned (Weldon v. Semple, Judge), these subsequent events fortify (as we shall argue) the application for certiorari.

ARGUMENT.

On the facts originally presented by these petitions the basis for the plea of double jeopardy was the common law plea of *autrefois convict,* arising out of the verdict of $50,000 *punitive* damages (expressly so found) against these relators for the same publication in the Lupkey case. A motion for new trial was granted and plaintiff's appeal seeking reinstatement of the award is presently under submission in the Supreme Court of Missouri. Because the new trial was granted on relators' motions, it would have been possible to argue, by ignoring the Missouri rule of State v. Bockman (Pet. p. 8), that the plea of double jeopardy is not applicable until and unless the Lupkey verdict is reinstated (U. S. v. Shotwell Mfg. Co., 355 U. S. 233, 78 S. Ct. 245, 252, 2 L. Ed. 2d 234, citing U. S. v. Ball, 163 U. S. 662, 672, 16 S. Ct. 1192, 1195, 41 L. Ed. 300.

On the facts subsequently developed, however, the plea of double jeopardy in the remaining case becomes predicated both on what was the common law plea of *autrefois convict* (in Lupkey v. Weldon) and on that of *autrefois acquit* (in Skain v. Weldon). As to the latter case, it is the plaintiff-prosecutor who will have to urge error and seek a new trial, and if double jeopardy properly applies in a judicial proceeding which has for its purpose the infliction of judgment for moneys assessed purely and expressly for *punishment,* even though (euphemistically) designated *civil* on the court's docket, then error (against the prosecutor) is irrelevant under the plea. Green v. U. S., 355 U. S. 184, 78 S. Ct. 221, 2 L. Ed. 2d 199, 61 A. L. R. 2d 1119.

Thus even though we regard the second named of the two applications (Weldon v. Hayes, Judge) as mooted pending the motion for new trial, the first of these two

applications now presents still more clearly the Question Presented (Pet. p. 3) of whether operation of the constitutional provisions against multiple trials for the same offense can be aborted merely by designating as "civil" several judicial proceedings seeking to punish defendants (relators) for the statutory crime of libel in the publication of a single article.

The question seems to be already answered by the statement of this Court in New York Times v. Sullivan, 376 U. S. 277, 84 S. Ct. 724:

> *"What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel."*

The petition should be granted in Weldon v. Semple, Judge.

Respectfully submitted,

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